

10 April, 2017

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: WC Docket 05-25: Special Access Rates for Price Cap Local Exchange Carriers
WC Docket 16-143: Business Data Services in an Internet Protocol Environment
WC Docket 15-247: Investigation of Certain Price Cap Local Exchange Carrier
Business Data Services Tariff Pricing Plans
WC RM-10593: Request Amendment of the Commission's Rules to Reform
Regulation of Local Exchange Carrier Rates for Interstate
Special Access Services
WC Docket 05-337: High-Cost Universal Service Support
WC Docket 10-90: Connect America Fund
GN Docket 13-5: Technology Transitions Policy Task Force

Ms. Dortch:

This letter is to advise you that on 10 April, 2017 I met telephonically with Mr. Claude Aiken, Wireline Legal Advisor, of the office of Commissioner Mignon Clyburn.

During our conversation, I explained to Mr. Aiken that I and my wife had founded LARIAT, the world's first WISP (fixed, terrestrial wireless ISP) 25 years ago and were continuing to deploy high speed Internet service to unserved areas of rural Wyoming. I mentioned that I was pleased and encouraged by the fact that the primary theme of April's open meeting – and one of Chairman Ajit Pai's top priorities – was the deployment of broadband infrastructure, since much of my own life's work and career have been devoted to this goal. I then addressed one of the agenda items on circulation (FCC-CIRC1704-04), providing the following information and suggestions.

Firstly, I noted that that referring to Special Access services as “Business Data Services” was potentially misleading, because the latter term suggests that these services are solely retail services, provided to businesses which are “end users” of those services. In fact, they include both wholesale and retail services. I noted that wholesale Special Access services are especially important to broadband deployment, and in fact were perhaps the only services of this type that the Commission needed to regulate – since if

wholesale services are readily available and fairly priced, multiple competitors will use them to create services at the retail level. As a result, market forces will naturally ensure that consumers enjoy both a variety of services and competitive pricing without any need for regulatory intervention. Thus, if the Commission wants to impose the lightest regulatory touch, the way to do this is to regulate solely at the wholesale level.

Next, I noted that any provider seeking to deploy broadband to an unserved area must make a business case for it to ensure that it can at least break even – and that this business case often depends heavily upon the availability and pricing of “middle mile” Special Access services. A WISP can only deploy service to unserved areas – especially very sparsely populated ones – if it first establishes a “beach head” in a nearby town with a higher population density and is able to sell a sufficient number of connections to achieve necessary economies of scale (i.e., to buy a gigabit or more of Internet bandwidth and transport to serve that location). Once this is accomplished, the WISP can use its wireless technology to reach out beyond the edges of town to locations which it is not economically feasible for a telephone or cable company to serve.

Unfortunately, incumbent providers are well aware that if the price of a “middle mile” connection to the Internet is such that the WISP cannot at least match the retail price of existing service in town, the business case fails and the WISP cannot deploy at all. Therefore, incumbent telephone and cable companies often attempt to price wholesale transport (in units of megabits or gigabits per second per month) above the retail price of Internet service. As a result, competitors cannot deploy without duplicating essential facilities – which, by definition, are economically infeasible to duplicate and which have usually been constructed using subsidies not available to WISPs. (We touched briefly on the fact that the FCC, oddly, does not consider ISPs which do not run their own VoIP systems to be eligible for USF/CAF/Lifeline funding even if they actively support over-the-top VoIP provided by third parties. LARIAT has recommended, in several of the above-docketed proceedings, that this policy be changed.) In any event, LARIAT has found the anticompetitive practices of pricing wholesale services above retail – and/or of refusing to provide Special Access services to competitive ISPs at all – to be its primary impediment to deployment in unserved areas.

Unfortunately, the draft Report and Order now on circulation (FCC-CIRC1704-04), at ¶¶250 passim, explicitly declines to address the anticompetitive practices of pricing wholesale services above retail... and also of refusal to deal. (Charter/Bresnan, the company which owns all of the cable systems in southeastern Wyoming, refuses to sell Special Access services to any competitive fixed ISP – at times even denying that such services, which are provided at retail to other types of businesses, exist.) I expressed our surprise that, given Chairman Pai's recent announcement that the FCC was to perform serious economic and cost/benefit analysis, the draft Report and Order failed to consider these fundamental economic concerns, as well as my hope that the FCC's new Office of Economics and Data would be consulted about them before the item was finalized.

LARIAT strongly recommends that the Commission revisit this section of the proposed Report and Order and consider establishing reasonable rules to prohibit refusal to deal (at least to the extent that the Special Access service constitutes common carriage) and prevent anticompetitive practices at the wholesale level. Such rules are absolutely essential to ensure that WISPs and other innovative providers can make a business

case for deployment to unserved and underserved areas, and – as mentioned above – may well obviate the need for some or all rules governing retail service. We further suggest that, because the docket has been open for so long and is so extensive, and because the sunshine period for the April Open Meeting is fast approaching, the Commission consider opening a notice and comment period to allow stakeholders to respond to the proposed Report and Order before voting on it.

This letter is being filed electronically via the Commission's Electronic Comment Filing System as per Section 1.1206(b)(2) of the Commission's rules.

Sincerely,

/s/

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